

Thursday, 1 May, 1947

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INTERNATIONAL MILITARY TRIBUNAL  
FOR THE FAR EAST  
Chambers of the Tribunal  
War Ministry Building,  
Tokyo, Japan

PROCEEDING IN CHAMBERS

On

A Matter brought up by Mr. Caudle  
in reference to the proposed interro-  
gation of former German Ambassador  
OTT in Peiping, China.

Before:

HON. SIR WILLIAM WEBB,  
President of the Tribunal and  
Member from the Commonwealth  
of Australia.

Reported by

JACK GREENBERG  
Chief Court Reporter  
INTFE

Appearances:

For the Defense Section:

Mr. Chas. B. Coudle, for the Accused  
SHIRATORI, Toshio.

For the Prosecution Section:

Mr. A. S. Comyns Carr, Associate Counsel,  
acting on behalf of the United Kingdom of  
Great Britain and Northern Ireland;  
Mr. Frank S. Tavenner, Jr.;  
Mr. Solis Horwitz; and  
Mr. David N. Sutton.

For the Secretariat:

Judge F. H. Dell, Legal Adviser;  
Mr. Chas. A. Mantz, Clerk of the Court;  
and  
Mr. Paul Lynch, Deputy Clerk of the  
Court.

The proceeding was begun at 0910.

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MR. CAUDLE: If your Honor please, Mr. Tavenner and I have a little matter to discuss with you.

THE PRESIDENT: Yes.

MR. CAUDLE: Please, your Honor, some time ago an order was entered granting counsel for SHIRATORI to interrogate Eugene Ott, former German Ambassador to Japan. Thereafter, an order was entered subpoenaing Ott to appear here, and Mr. Mantz tells me that the subpoena was sent out some months ago and that no returns have been made on it. So, in view of the circumstances, in view of the doubt that exists that, possibly, this Tribunal cannot force a ~~foreign~~ national in some other country to come here and testify --

THE PRESIDENT: Is he outside the jurisdiction?

MR. CAUDLE: He is in China.

THE PRESIDENT: We will have to rely upon powers possessed by the Allied Powers, the Supreme Commander. We have none --

MR. CAUDLE: I see.

THE PRESIDENT: (Continuing) -- except

such as they exercise on our behalf.

MR. CAUDLE: In view of the circumstances, I have made arrangements to go to Peiping to interrogate Mr. Ott. But, in view of the Court's ruling, I didn't know exactly what procedure to follow. So, yesterday I discussed the matter with Mr. Tavenner, and again this morning, and we have reached an agreement, subject to the approval of the Tribunal, that I should go to Peiping and interrogate Mr. Ott and, immediately upon my return, I should submit a copy of the interrogation to the prosecution for their perusal at which time they would file or notify the Tribunal or you in Chambers of any objection they might have as to the relevancy of the document without prejudice to the entire document but just such phases or parts thereof that might be in their minds, irrelevant to the issue and incompetent as evidence; and, thereafter, they would be permitted either to file an interrogation with Ott either by mail or by some member of the prosecution and submit -- is that correct, Mr. Tavenner?

MR. TAVENNER: In other words, the right of cross-examination by some method that may be selected at the time.

THE PRESIDENT: Yes.

MR. TAVENNER: If we deem it necessary.

THE PRESIDENT: Well, I think the Court will concur in any agreement you make about a matter of that kind.

MR. TAVENNER: The point that we want to stress is that, if he brings back an affidavit, that such matters regarding relevancy be passed upon by the Tribunal immediately so that we would have time to file interrogatories or take such other action as we may think proper.

THE PRESIDENT: Yes.

MR. TAVENNER: If we wait until the final phase of the case, we probably would be barred by time from further cross-examination.

THE PRESIDENT: Well, I see no objection to the course you propose. That is all right. I will pass it on to my colleagues. They may see an objection to it.

MR. CAUDLE: Another matter, sir: These Germans are queer people. I went down to Atami to see some, and they wouldn't talk without some kind of order from the IPS. I discussed it with the IPS, and they said it is none of their business; they wouldn't have anything to do with it.

And I came in here, and you granted an order directing them to answer queries. And, if you please, sir, I would appreciate if I could get a similar order as to Ott because I'm liable to get way over there in China, and the first thing, why, that monkey won't talk.

THE PRESIDENT: No, I couldn't give you a sort of blanket order because you may ask him improper questions.

MR. CAUDLE: Well, sir, can't you direct him to permit an interview and an interrogation? You could rule on the improper questions back here. We've already agreed on that. I'm just afraid, if I get there unarmed with some kind of document, that I might have made my trip in vain.

THE PRESIDENT: I've made an order for facilities for interrogation, and I've issued a subpoena in his case. If you flourish that at him, he may do what you want. But I don't think I can add to that by telling him to answer questions.

MR. CAUDLE: Couldn't you issue an order directing me to question him?

THE PRESIDENT: No.

MR. CAUDLE: Sort of getting around the elbow to get to your thumb; but I want something

there --

THE PRESIDENT: No, I couldn't be a party to any attempt to mislead.

MR. CAUDLE: It is not misleading him. From what I understand, you can't very well mislead that character; he's a pretty rough chum.

THE PRESIDENT: No, I think we will have to leave it at that. Yes. Well, that is all I can do.

MR. CAUDLE: You mean there is no order at all?

THE PRESIDENT: No, I am not going to appear to exceed my powers for the purpose of bluffing anybody.

MR. CAUDLE: Well, I'll just put some questions to him.

THE PRESIDENT: I'll state to him as clearly as I can what powers I have, and I have no power to compel him to answer any questions.

MR. CAUDLE: I'm sorry the Court has the impression I was trying to bluff him; I was just trying to get him to talk. That was the whole idea about it. These Germans -- I've been dealing with them before -- they're all scared, and it is pretty hard to get them to let the cream down.

THE PRESIDENT: Well, I can do nothing more than that. Refer him to the orders I have already made, and show them to him.

MR. CAUDLE: Well, I have those. Thank you. I just hope it works.

(Whereupon, at 0915, the proceeding was concluded.)

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